In the Supreme Court of the United States

October Term 1947

No. 99

Armand Robichaud, **Petitioner,** **v.** **Daniel J. Brennan,** Judge of Essex County Court of Common Pleas, State of New Jersey, et al., **Respondents.**	**On application for certiorari to the Court of Errors and Appeals of the State of New Jersey.**

Brief Opposing Petition for Certiorari

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Brief Opposing Petition for Certiorari

I

Reference to official report of opinions delivered in courts below.[*]

The opinion (218) of the court immediately below, which affirmed the judgment of the New Jersey Supreme Court for the reasons expressed in the opinion of the latter, has not been officially reported, though it appears in 52 A 2d, 697.

The opinion of the New Jersey Supreme Court, which dismissed the writ in certiorari proceedings brought by the

[*]
Unless otherwise plainly indicated by the context, numbers in parentheses throughout this brief, refer to pages of the printed record of the court below.

petitioner against the respondent judge to review his action in dismissing a writ of habeas corpus previously allowed (4) to test the legality of petitioner's extradition to Michigan (16-60) and his detention under a rendition warrant (61-62) executed by the Governor of New Jersey, is officially reported in 134 N.J.L. 532 (49 A. 2d 287).

The opinion of the respondent judge of common pleas,[1] is not officially reported but it appears (140-162) in the printed record.

II

Counter-Statement concerning jurisdiction.

Counsel for petitioner states (petition, p. 3) without any elaboration, that the jurisdiction of this Court is invoked under § 237 of the Judicial Code as amended (28 USCA § 344 [b]).

It is our position that, while the Federal Constitution[2] commands each State to honor a demand of the executive authority of a sister State for the rendition of a fugitive from justice, and although the Congress is said to have implemented this constitutional provision by its Act of 1793,[3] nevertheless, the record at bar discloses that sub-

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[1] Since it so clearly defines the issues, and since each decision of the reviewing courts accepts its rationale, the opinion of Judge Brennan (140) of the Essex county court of common pleas, is basic.

[2] Constitution of the United States, article 4, § 2, subdivision (2).

[3] 18 USCA § 662.

stantial, purely local, nonfederal grounds underlie each decision of the state courts below; and that each opinion rests squarely on a judicial interpretation of New Jersey[4] and Michigan [5] statutes. We contend that the only federal question that could possibly arise, was decided by construing Michigan criminal law in view of a liberal interpretation of the congressional Act of 1793 (18 USCA § 662) necessitated by the language of the Federal Constitution (art. 4, § 2, sub. 2).

We, therefore, respectfully suggest that there is a reasonable doubt of this Court's jurisdiction.

III

Counter-Statement of the Case.

The conflict in the courts below over extradition proceedings (16-62) for the return of petitioner from the asylum State of New Jersey to the demanding State of Michigan, revolved closely about Michigan's 'one-man grand jury law'[6] in conformity with which the 'warrant' (34-37) for petitioner's arrest on a criminal charge was issued by a judge of the circuit court for the county of Ingham.

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[4]

The Uniform Criminal Extradition Law as adopted by New Jersey in 1936: N. J. Revised Statutes, 2:185-9 et seq.

[5]

The same Act as adopted by Michigan in 1937: Act No. 144, Pub. Acts 1937 (Mich. Stat. Ann., Cum. Supp. § 28.1285-1 et seq.).—Also certain provisions of the Michigan Code of Criminal Procedure hereinafter scheduled.

[6]

Michigan Code of Criminal Procedure, chap. 7, § § 3-6, incl. (Mich. Comp. Laws 1929, § § 17217-17220 [Mich. Stat. Ann. § 28.943-§ 28.946]).

Appendix 'A', *post*, p. 25, is an explanatory summary Michigan criminal procedure 'in due course' as well under her 'one-man grand jury' system for the in-gation of criminal prosecutions.

Appendix 'B', *post*, p. 37, is a schedule of such Michigan ws.

Appendix 'C', *post*, p. 44, is a summary of the extra-tion papers (16-62) on the basis of which the executive thority of the State of New Jersey honored the requisi-on of the Governor of the State of Michigan for the sur-nder of the petitioner as a fugutive from justice.

In addition to the foregoing, we deem it necessary to set rth the following in correcting inaccuracies and omissions the statement of the other side.[7]

1. On the 2d day of May 1944, having conducted a one-an grand jury inquiry (32) instigated by the attorney eneral of the State (34), pursuant to law (see appendix A'), and having upon consideration of testimony found robable cause to suspect that the petitioner Robichaud nd others were guilty of a criminal offense, a judge of the ircuit court for the county of Ingham issued his 'warrant' (34-37) charging them specifically with having conspired wilfully and corruptly to affect and influence (by means f bribery) the action of the legislature of the State of Michigan'.[8]

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[7]

Supreme Court Rule 27.

[8]

Common-law offenses (here, e.g., conspiracy), for the punishment of which no provision is expressly made by Michigan statute, are defined as a felony under blanket section 505 of her Penal Code (Mich. Stat. Ann. § 28.773).

Thereafter, the petitioner became a fugitive from justice by fleeing to New Jersey;[9] the executive authority of Michigan made requisition (17) upon the Governor of New Jersey for the apprehension and delivery of petitioner to Michigan's authorized agent (16); the chief executive of New Jersey issued his warrant (61) of rendition; and the habeas corpus proceedings under review were instituted.

2. The statements set forth in italics at the bottom of page 6 of the printed petition for certiorari and the brief in support thereof (under the head of 'Facts'), should be qualified:

(a) It is said that four certain documents among a series of papers attached to Michigan's requisition, 'are antedated by the warrant (of May 2, 1944) by various periods' ranging from 29 to 31 days:

(1st) an affidavit (21) of Charles F. Hemans, dated June 1, 1944;

(2nd) a certificate (32) bearing date of June 2, 1944, and signed by the circuit judge who conducted the one-man grand jury inquiry and, as the result thereof, issued the warrant in question;

(3rd) a transcript (47) of testimony taken from the same Charles F. Hemans when examined before the same circuit judge at the preliminary examination conducted by him on the 31st day of May 1944; and

(4th) an affidavit (39) subscribed and sworn to (40) by the prosecuting attorney of Ingham county on June 2, 1944.

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[9] Petitioner raises no question concerning this phase of his extradition from New Jersey to Michigan.

The statement that these documents were executed after the warrant was issued by the one-man grand jury, while true in fact, is of no legal significance, for they were never intended to form the bases of the grand jury warrant, and it is perfectly obvious from their content that they were intended to support the application for extradition, and that they served no other purpose.[10]

For the sake of clarity, it should be said that the warrant issued by the circuit judge after sitting as a one-man grand jury, had as its foundation the testimony of witnesses heard by the judge himself within the confines of the grand jury room.[11]

(b) Nor is there any legal significance (in our opinion, at least) to the further statement that 'at the time of the issuance of the warrant (by the one-man grand jury) there was no affidavit in existence so far as the requisition upon the Governor of New Jersey discloses, upon which the warrant for the apprehension and rendition of the appellant (petitioner) was issued'.

What counsel probably intended to say was that the warrant issued by the circuit judge (after conducting his one-man grand jury inquiry) was not supported by any affidavit.

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[10]

For instance, the affidavit of Hemans (21-29) identifies (28) a photograph of Robichaud attached to the application for extradition; the judge's certificate (32-33) verifies a copy of the warrant issued by him as a one-man grand jury, and states that the certification 'is made for the purpose of aiding and securing the rendition from the State of New Jersey' of petitioner. And the affidavit of the prosecuting attorney (39-40) avers in substance that the offense charged in the warrant is indictable.

[11]

It is quite apparent that Hemans, who signed the affidavit (21-29) in support of extradition, was a grand jury witness (47-55).

This is correct, as a matter of fact, for what supported the warrant was the testimony of witnesses who appeared before the circuit judge during the one-man grand jury inquiry.

IV

Summary of the Argument.

We respectfully submit:

First: There are several grounds on which the Court might doubt its jurisdiction.

1. Each opinion of the courts below interprets and applies provisions of the uniform criminal extradition law of the States of New Jersey[12] and Michigan,[13] holding under such judicial interpretation that the requisition papers (16-60) presented by the executive authority of Michigan to the Governor of New Jersey, complied with the law of New Jersey.

2. Each such opinion interprets pertinent provisions of the code of criminal procedure of the sister State of Michigan, in accordance with the decisions of her highest court, holding that the warrant charging petitioner and others with having committed a criminal offense proscribed by the Michigan penal code, issued by a circuit court judge acting in the capacity of a one-man

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[12] Adopted by New Jersey in 1936 (New Jersey Revised Statutes, 2:185-9 et seq.)

[13] Adopted by Michigan in 1937, Act No. 144 (Mich. Stat. Ann., Cum. Supp. § 28.1285-1 et seq.)

grand jury, constituted an 'indictment' within the meaning of § 3 (3) of the uniform criminal extradition act of the States of New Jersey (R.S. 2:185-11) and Michigan (Stat. Ann., Cum. Supp. § 28.1285-3), and the congressional act of 1793 (18 USCA § 662).

3. Therefore,[14] unless it may be said that the courts' judicial interpretation of the Act of Congress (18 USCA § 662) was so intertwined with their judicial construction of local laws as to render it necessary to decision,[15] the judgment of the court below rests on substantial nonfederal grounds.[16]

Second: If, under the terms of § 237 of the Judicial Code (28 USCA § 344-b), as judicially interpreted (Rule 38), there yet remains a federal question to be resolved by this Court in its discretion, our position is that the extradition papers (16-60) on file in this cause, comply with the provisions of the Act of Congress (18 USCA § 662), as liberally construed by this Court.[17]

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[14]

Since this Court considers itself bound by decisions of the highest court of a State insofar as state law is concerned. Williams v. Kaiser, 323 U.S. 471; Sages Stores Co. v. Kansas, 323 U.S. 32; A.T. & S.F. R'y Co. v. California, 283 U.S. 380.

[15]

State Tax Comm. of Utah v. Van Cott, 306 U.S. 511; though the question is whether the non-federal ground independently supports the judgment. Abie State Bank v. Weaver, 282 U.S. 765.

[16]

See and cf. Geo. A. Richardson Mach. Co. v. Scott, 276 U.S. 128; United States v. Bank of N.Y. & Trust Co., 296 U.S. 463; Williams v. Kaiser, supra; Radio Station WOW v. Johnson, 326 U.S. 120.

[17]

Munson v. Clough, 196 U.S. 364; In re Strauss, 197 U.S. 324, 331; Appleyard v. Massachusetts, 203 U.S. 222; Biddinger v. N.Y. Police Comm., 245 U.S. 128.

1. The warrant (34) issued by a Michigan circuit judge while sitting as a one-man grand jury (32), charges petitioner and others (in specific language) with a felony punishable under the laws of that State (39-40), thereby institutes prosecution by setting in motion prescribed judicial machinery leading to trial, and therefore constitutes an 'indictment' within the meaning of that term as used in 18 USCA § 662, when viewed in the light of the express mandate of the Constitution of the United States (article 4, § 2, sub'n 2).

2. In the alternative, it may be successfully contended that the affidavits on file in the Michigan cause and included in her requisition papers,[18] made before a magistrate of the State,[19] charging the 'person demanded' (petitioner herein) with having committed a felony, comply with the Act of Congress (18 USCA § 662).

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[18]

These include the affidavits of Charles F. Hemans (21-29), a witness who narrates in full detail the circumstances of the crime charged against Robichaud, John Danzo (30-31) and Hubert J. Ellison (42), who corroborate him, Victor C. Anderson (39-40), the prosecuting attorney of Ingham County, who avers in substance that the offense charged against Robichaud is a felony under Michigan law (Penal Code, § 505), and John F. O'Brien (40-41), chief of police in and for the city of Lansing, Michigan, who establishes beyond present controversy the flight of petitioner to New Jersey.

[19]

These affidavits were sworn to before Louis E. Coash, justice of the peace in and for the City of Lansing, County of Ingham, State of Michigan (29, 31, 40, 42), the only acting justice of the peace of that jurisdiction (41-5), and therefore a magistrate authorized to issue warrants (Mich. Code of Criminal Procedure, chapter 4, § 1 [Mich. Comp. Laws 1929, § 17135; Mich. Stat. Ann. § 28.860]).

V

The Argument.[20]

Point One

We suggest several valid reasons why certiorari should be denied in this cause for lack of jurisdiction.

While the granting of a writ of certiorari to review the final judgment of a state court, though controlled by law (28 USCA § 344-b) and circumscribed by rule (Supreme Court Rule 38), is well within judicial discretion, we also note that the Court never interferes with the criminal procedure ordained by a State unless there is a manifest infringement of some right defined by the Federal Constitution or a violation of some fundamental privilege which, because 'implicit in the concept of ordered liberty',[21] is guaranteed by the Fourteenth Amendment.

No such privilege or right, we respectfully submit, has been invaded or restricted in this cause by Michigan or New

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[20]

The argument in this brief (in compliance with Rule 27) is made as summary and concise as possible, all matters of detail relative to the laws of New Jersey and Michigan being left to the appendixes.

[21]

Palko v. Connecticut, 302 U.S. 319, 325. This Court has recently reaffirmed the established doctrine that a State may control her criminal procedure 'in accordance with its own ideas of the most efficient administration of criminal justice' Adamson v. California, No. 102 October Term 1946, slip opinion, p. 10.

Jersey, and only a 'technical rule of law' is drawn in question.[22]

1. The opinion of the Supreme Court of New Jersey, 134 N.J.L. 532, 49 A 2d 287, adopted by the court below,[23] holds *(1st)* that the warrant (34) issued by the Michigan trial court (32) 'charges a crime against the petitioner and others in the manner provided by the laws of the demanding State'; *(2nd)* that the charge is made 'by a duly constituted grand jury under the statute law of Michigan'; and *(3rd)* that 'such warrant as is now before the court is a sufficient instrument on which the petitioner could be apprehended and held for trial in the demanding State'.

The reasoning of the New Jersey Supreme Court proceeds along the following line: that the single question for decision is whether Michigan's procedure is adequate, under the law, to require and warrant the Governor of New Jersey to turn the petitioner over to the demanding State;[24] that the Governor of Michigan made due authen-

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[22]

The effort at bar seems to split hairs over the term 'indictment', although the warrant issued by the Michigan one-man grand jury informs the accused in the clearest possible language, of the nature of the offense charged against them, accords them the right to a preliminary examination and a full pre-trial hearing (unless waived by flight from the state), whereas those indicted by the traditional 16-member grand jury must stand trial without such benefits.

[23]

Each opinion follows the line of reasoning of the court of original jurisdiction (140).

[24]

The court notes that petitioner argues that the procedure in the instant case does not comply with the requirements of the extradition statutes of either the Federal Government or the State of New Jersey, and it cites and quotes from each. But, it should be noted, the Supreme Court of New Jersey does not construe the language of the Congressional Act of 1793 (18 USC § 662), nor does decision turn thereon.

tication that the warrant issued was in accordance with the laws of that State and charged the accused with a crime under such laws; that one of the judges of the Ingham circuit court inquired into the complaint and issued a warrant which sets forth at length and clearly alleges the charges; that it states that the inquiry was in accordance with the statutes cited (the Michigan 'one-man grand jury law'); and that, under decisions of the Supreme Court of Michigan,[25] the grand jury warrant 'took the place of an indictment, which under the Code of Criminal Procedure, 3 Comp. Laws 1929, 17118, Stat. Ann. 28.843, includes the words information, presentment, complaint, warrant and any other written accusation'.

Having expressed this opinion, and having agreed with the conclusions of the trial judge, the New Jersey court said:

> "The warrant is, in effect, an indictment within the meaning of the extradition statute, is in compliance therewith and alleges an offense against the laws of the State of Michigan. The authorities of this State will not pass upon the validity of a complaint filed in another jurisdiction".[26]

2. The New Jersey courts, while considering the Federal law (18 USC § 662), interpreted and applied the provi-

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[25]

People v. Kert, 304 Mich. 148; People v. Ewald, 302 Mich. 31; In re Watson, 293 Mich. 263; People v. St. John, 284 Mich. 24; In re Investigation of Recount, etc., 270 Mich. 328. And see authorities cited in Appendix A.

[26]

In the courts below, petitioner's counsel contended, inter alia, that the warrant failed to charge an offense known to the law of Michigan, but that question is not pressed here.

sions of the uniform criminal extradition law, as adopted by that State, and this Court would ordinarily consider itself bound thereby,[27] unless two grounds, state and federal, are inextricably interwoven.[28] Here, however, we respectfully suggest, the state ground is sufficient to sustain the judgment, and hence this Court should hesitate to review it. There are decisions to the effect that a writ of certiorari must be dismissed where the state court's decision rested on nonfederal grounds, notwithstanding an unnecessary discussion of a federal constitutional question;[29] that the Court will not review a state court decision resting on an adequate and independent nonfederal ground, although the decision also rests upon an erroneous view of federal law;[30] and that in such circumstances it is for the Court to determine whether a nonfederal ground independently supports the state judgment.[31]

Or, putting it another way, the Court has held[32] it has no jurisdiction to review a state court decision unless it appears affirmatively from the record not only that a federal question was presented for decision to the highest court of the State having jurisdiction, but that its decision of a

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[27]

A. T. & S. F. Railway Co. v. California, 283 U.S. 380; Sages Stores Co. v Kansas, ex. rel. Mitchell, 323 U.S. 32; Williams v. Kaiser, 323 U.S. 471.

[28]

State Tax Commission of Utah v. Van Cott, 306 U.S. 511.

[29]

George O. Richardson Machine C. v. Scott, 276 U.S. 128.

[30]

Williams v. Kaiser, supra; Radio Station WOW v. Johnson, 326 U. S. 120.

[31]

Able State Bank v. Weaver, 282 U.S. 765.

[32]

Southwestern Bell Tel. Co. v. Oklahoma, 303 U.S. 206.

federal question was necessary to determination of the cause, that the federal question was actually decided, or that the judgment as rendered could not have been decided without deciding it.[33]

The opinions expressed by the courts below and the judgment rendered are supported, we respectfully submit, by a substantial, independent nonfederal ground. That independent ground, we think, is that the warrant issued by the Michigan one-man grand jury constituted an indictment within the meaning of the New Jersey extradition law (R.S. N.J., 2:185-11). Under the Federal Constitution (article 4, § 2), and the Act of Congress (18 USC § 662), as we personally view them, certain rights (with respect to extradition) were reserved to the States as sovereign powers, and there was no intent to limit their exercise. As we shall presently note, the express language of § 662 of the Code imposes upon the Governor of the asylum State an affirmative duty, under the conditions prescribed, to cause a fugitive from the justice of the demanding State 'to be arrested and secured . . . and to cause the fugitive to be delivered' to the agent or representative of the demanding State.[34] The matter of detail, of procedure, and of in-

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[33]

See also State of Indiana ex rel. Anderson v. Brand, 303 U.S. 95; rehearing denied, 303 U.S. 667; and, for converse, cf. Commonwealth of Virginia v. Imperial Coal Sales Co., inc., 293 U.S. 15 with Honeyman v. Hanan, 300 U.S. 14.

[34]

As the judge of the trial court said (152-153) so well: 'The constitutional provision was designed to aid the respective states in bringing to justice persons charged with crime who had fled the jurisdiction in order to escape prosecution and punishment, and not to hamper them. It was designed for the benefit of the states, not for individuals. It was not intended that its operation should confer asylum upon an alleged malefactor because of technical consideration—exactly the opposite result was intended—to prevent a person charged with crime from finding asylum within the borders of another state'.

dividual rights, was left to the States, and each of the States involved in this controversy has enacted a law defining such procedure and rights (they are, we think, more restrictive than the Act of Congress).

It follows, we respectfully suggest, that the judgment of the courts below is not reviewable by this Court.

Point Two

If a federal question remains, then we contend that the extradition papers (16-60) submitted by Michigan, comply with the provisions of the Act of Congress, supra.

Article IV of the Constitution of the United States, with one possible exception,[35] reserves to the states certain sovereign rights, defines certain duties which each owe to the other, limits the admission of new States to the Union, grants to the Congress certain defined powers, and guarantees to every State a republican form of government. It is not a bill of rights; if defines no individual privileges; and it was not designed to protect the individual citizen (with the one exception pointed out in footnote 35). Subdivision 2 of section 2 of this article reads:

> "A person *charged* in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime".

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[35] Section 2, clause 1, of the article guarantees to the citizens of each State 'all privileges and immunities of citizens in the several States'.

The Congress implemented this clause of section 2 when it enacted the extradition law of 1793 (18 USC § 662), but we suggest it may be said that the provisions of that Act could not, if properly construed, restrict or limit the right or power reserved to each State in the Federal Constitution.

That Act provides:

> "§ 662. Fugitives from State or Territory. Whenever the executive authority of any State . . . demands any person as a fugitive from justice, of the executive authority of any State . . . to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State . . . , *charging the person demanded* with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State . . . from whence the person so charged has fled, it shall be the duty of the executive authority of the State . . . to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given . . . (etc., etc., in language not pertinent here)".

The foregoing language of the Constitution and Federal Law has always received a liberal construction.

> "Constitutional and statutory provisions relating to interstate extradition should be liberally construed to effectuate their purposes . . . The Federal Constitution guarantees no right of asylum to a person who has committed a crime in one state and fled to another".

35 C.J., Sec. 320, and cases cited.

As this Court has said:[36]

> "Under the Constitution each State was left with full control over its criminal procedure. None could have anticipated what change any state might make therein, and doubtless the word 'charged' was used in its broad signification to cover any proceeding which a state might see fit to adopt by which a formal accusation was made against an alleged criminal. In the strictest sense of the term a party is charged with crime when an affidavit is filed alleging the commission of an offense and a warrant is issued for his arrest, and this in true whether a final trial may or may not be had upon such charge. It may be, and is true, that in many of the States some further proceeding is, in the higher grade of offenses at least, necessary before the party can be put upon trial, and that the proceedings before the examining magistrate are preliminary, and only with a view to the arrest of the alleged criminal; but extradition is a mere proceeding in securing arrest and detention. An extradited defendant is not put on trial upon any writ which is issued for the purposes of extradition, any more than he is upon the warrant which is issued by the justice of the peace directing his arrest".

And, the Court inquires: 'Why should the state be put to the expense of a grand jury and an indictment before securing possession of the party to be tried?', concluding this phase of the opinion in the following words:

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[36]

In re Strauss, 197 U.S. 324, overruling the contention that since the petitioner, who was charged with a felony by affidavit before a justice of the peace could not be tried before such justice for such felony, he was not charged with a crime within the intendment of the Constitution, and that there had to be an indictment found against him.

"While courts will always endeavor to see that no such attempted wrong (wanton misuse of the extradition process) is successful, on the other hand *care must be taken that the process of extradition be not so burdened as to make it practically valueless.* [Emphasis supplied]. It is but one step in securing the presence of the defendant in the court in which he may be tried, and in no manner determines the question of guilt".

The same thought was again expressed by the Court in

Appleyard v. Massachusetts, 203 U.S. 222, 228,

where it is said:

" . . . And while a state should take care within the limits of the law, that the rights of its people are protected against illegal action, the judicial authorities of the Union should equally take care that the provisions of the Constitution be not so narrowly interpreted as to enable offenders against the laws of a state to find a permanent asylum in the territory of another state".

Other decisions of the Court, the majority of which are treated by the trial judge in a scholarly manner (140-162), sustain such a liberal interpretation.[37]

"Such being the origin and purpose of these provisions of the Constitution and statutes, they have not been construed narrowly and technically by the courts as if they were penal laws, but liberally to effect their important purpose. . ."

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[37] See, among others, Pierce v. Creecy, 210 U.S. 387; Compton v. Alabama, 214 U.S. 1; Strassheim v. Daly, 221 U.S. 280; and Biddinger v. N.Y. Police Commissioner, 245 U.S. 128.

Biddinger v. N.Y. City Police Comm'r, 245 U.S. 128, 133.

These principles may be applied to the present case in short order:

1. The warrant was issued by a judicial officer (the judge of a trial court vested with the highest authority) who, at the request of Michigan's attorney general, had lawfully constituted himself a one-man grand jury, had conducted an investigation 'concerning certain criminal offenses' (34), had examined witnesses and heard their testimony,[38] and, based thereon, had found probable cause to suspect that the petitioner and others had committed a crime punishable as a felony under the laws of the State of Michigan. He did not rely on mere affidavits, nor did he listen to the complaint of an injured party who charged a specific criminal offense of which he was the victim. The crime charged in the warrant (conspiracy to corrupt the legislature of the State) was against the commonwealth itself; and the story came, as it had before in Michigan's recent history,[39] out of the mouths of witnesses who incriminated themselves.[40]

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[38]
The investigation had a wide range that covered the alleged misconduct of members of the legislature and their co-conspirators.

[39]
In re Slattery, 310 Mich. 458; certiorari denied, 325 U.S. 876; In re Watson, 293 Mich. 263; In re Wilkowski, 270 Mich. 787. See also, In re Ward, 295 Mich. 742; In re Cohen, 295 Mich. 748. These cases indicate that in the majority of instances, such witnesses are reluctantly compelled to tell the truth.

[40]
See affidavit (21) and examination (47) of Charles F. Hemans, who incriminated himself and others. This method of compulsion of the truth is one of the advantages of Michigan's grand jury system. Cf. recent case of Adamson v. California.

The warrant thus issued was not the ordinary process to authorize arrest; it 'charged' the commission of a crime in explicit terms and in plain understandable language; it 'indicted' the petitioner, informed him of the nature of the offense, and it furnished him the details. The entire proceedings from start to finish were ordained by the law of the State and, under decisions of her highest court, the 'warrant' stood in the place of an indictment, the only distinction between the 'one-man grand jury' procedure and that of the traditional grand jury being that in petitioner's case the accused were afforded the additional safeguard of a preliminary examination.

We, therefore, respectfully submit that the Michigan warrant of arrest, charging petitioner with a felony, constitutes an indictment (a formal charge of crime) within the meaning of the Constitution and the Act of Congress.

2. Moreover, the Act of Congress (18USC § 662) requires a fugitive to be surrendered when the executive authority of the demanding State 'produces an affidavit made before a magistrate, . . . charging the person demanded with having committed . . . felony'. It says nothing about a warrant, nor does it require that the affidavit shall precede the warrant in course of time.

In the case at bar, the State produced several affidavits (21-31, 39-40, 42, 43) charging the person demanded with having committed a felony. These affidavits were 'made before a magistrate', a justice of the peace of the city of Lansing having jurisdiction in the premises. They relate in full the details of the crime, and they justified issuance of the governors' warrants of requisition and rendition. Then, to make doubly certain, the Michigan authorities, out of an abundance of precaution, attached to these extradition papers a transcript of the examination (47-55) of the

witness Major Charles F. Hemans, who testified under oath during the preliminary examination in this cause.

We, therefore, respectfully submit there is no substance in petitioner's complaint that he has been denied due process of law.

VI

Conclusion.

For the reasons set forth in this brief (esp., in the summary of argument), we respectfully submit the writ of certiorari should be denied the petitioner.

Respectfully Submitted,

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